

**SIO KIM ALIAS JOHN DIA, PETITIONER AND APPELLEE, VS.  
REPUBLIC OF THE PHILIPPINES, OPPOSITOR AND APPELLANT.***G. R. No. L-20415. December 29, 1965*

Ponente: MAKALINTAL, J.

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By petition filed October 18, 1960 Sio Kim alias John Dia applied for naturalization in the Court of First Instance of Surigao. Besides the allegations concerning his qualifications to become a citizen, petitioner stated that he was the son of a Filipino mother and a Chinese father and that since he was a minor when his father died he believed he was, and should be considered, a Filipino citizen.

The Solicitor General, represented by the Provincial Fiscal of Surigao, opposed the petition on a number of grounds, among them that petitioner had not filed a declaration of intention. In its decision rendered February 9, 1962 the trial court found that petitioner possessed all of the qualifications and none of the disqualifications for naturalization, but declared that it would be superfluous to grant the petition because being the illegitimate son of a Filipino mother and a Chinese father he was and had always been a Filipino citizen and therefore was not subject to the laws governing alien residents in the country.

On February 21, 1962 the court amended its decision by declaring petitioner eligible for Filipino citizenship and granting his application for naturalization, subject to the provisions of Republic Act No. 530. The amendment was made in the light of the ruling of the Supreme Court in the case of *Palaran vs. Republic*, G. R. No. L-15047, January 30, 1962, that courts have no authority to adjudge, by way of declaratory relief, that one is a Filipino citizen. That ruling had previously been laid down in *Tan Yu Chin vs. Republic*, G. R. No. L-15775, April 29, 1961 and *Tan vs. Republic*, G. R. No. L-16108, Oct. 31, 1961.

On March 2, 1962 petitioner moved for a further amendment of the decision so as to have it include a finding that he was the son of a Filipino mother, Leona Custodio, whose Chinese common-law husband died while petitioner was still a minor and that he should therefore be considered a Filipino. In an order dated April 17, 1962, the court said that there was no need to make such a finding, but made the following statement nevertheless: "In any event, the evidence is uncontroverted that the petitioner is the son of Leona Custodio, a Filipina, who took him to Placer, Surigao, when he was barely 14 years old, and the petitioner remained in this country continuously until this date, the very fact which was made the basis of the original dispositive part of the decision of this Court."

From the decision as thus finally amended this appeal has been taken by the Solicitor General. The first error assigned by him concerns the failure of petitioner to file a declaration of intention to become a citizen as required by Section 5 of the Naturalization Law. Petitioner claims exemption from such requirement on the ground that when he filed his petition he had been continuously a resident in the Philippines for more than 30 years.

Under section 6 of the said law there are two classes of persons exempt from filing a declaration of intention: those born in the Philippines and have received their primary and secondary education in public schools or in schools recognized by the Government and not limited to any race or nationality; and those who have resided here

continuously for 30 years or more before filing their application for naturalization. But the same section of the law says that "to such requirements shall be added that which establishes that the applicant has given primary and secondary education to all his children in the public schools or in private schools recognized by the Government and not limited to race or nationality."

The evidence in the instant cases discloses that petitioner did not comply with this additional requirement when he filed his application for naturalization. He has eight children by his wife Dy Gay, whose names and dates of birth are as follows: (1) Jose Sio, May 20, 1927; (2) Librada Sio, December 24, 1928; (3) Petronio Sio, October 11, 1931; (4) Cristeta Sio, February 15, 1932; (5) Manuel Sio, January 21, 1935; (6) Eleuterio Sio, October 22, 1938; (7) German Sio, January 22, 1942; and (8) Veronica Sio, April 25, 1945.

Not one of these children ever finished high school. Only three—Jose, Eleuterio and German—reached the third year. The youngest, Veronica Sio, who was a little over fifteen when petitioner applied for naturalization, attended the Chinese High School in Cebu, but quit in order to attend to her father's store. German Sio was 18 in 1960, but the evidence with respect to him shows only that he attended third year high school in the Northeastern Mindanao College during the school year 1958-1959. There is no showing as to whether he continued schooling thereafter. Manuel reached majority in 1956, but the record shows his enrollment in school to be only up to 1950-1951, when he was in the first year of high school. The same thing is true of Cristeta, who became of age in 1953, but appears to have attended only up to the first year of high school in 1951.

In view of the foregoing circumstances, the trial court erred in declaring that petitioner was exempt from filing a declaration of intention to become a Filipino citizen, pursuant to section 6 of the Naturalization Law. The failure to file such declaration constituted a jurisdictional defect, which rendered the entire proceeding null and void. It is therefore unnecessary to consider the other errors alleged by the Solicitor General in his brief.

The judgment appealed from is reversed and the petition is dismissed, with costs.

Bengzon, C. J., Concepcion, Reyes, J. B. L., Dizon, Regala, Bengzon, J. P. and Zaldivar, JJ., concur.

Judgment reversed.

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